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**U.S. Citizenship
and Immigration
Services**

D4



FILE: SRC 01 220 51525 Office: TEXAS SERVICE CENTER Date: JUN 22 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn although the petition is now moot.

The petitioner is a temporary employment service agency that provides resort staff workers to hotels and restaurants on the Alabama Gulf Coast during the prime tourist season. It desires to employ the beneficiary as a housekeeping cleaner for six and one-half months. The director determined that the petition was filed without a temporary labor certification from the Department of Labor (DOL) or notice stating that such certification could not be made. The director also determined that the position being offered is not temporary.

On notice of certification, neither counsel nor the petitioner presents additional evidence.

In its decision, the director inadvertently cited the H-2A regulations. The petition indicates that the requested nonimmigrant classification is H-2B. Therefore, the denial was substantiated by the wrong regulations.

Further, the director states in his decision that the petitioner is applying for an extension of its employees' previously authorized employment, and therefore, the positions are not temporary. The director's erred in making this statement as the petition indicates that the employment request is for only one worker and for new employment.

This case should be remanded to the director to correct his decision and determine whether the beneficiary qualifies for H-2B classification. However, to remand this case for a new decision would have no practical effect because the period of requested employment has passed.

ORDER: The decision of the director is withdrawn, although the petition is now moot due to the passage of time.